

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln No.: 10/728,743) Confirmation No. 2233
Filed: December 4, 2003)
) VIA EFS WEB E-EFILING
Applicant: Andrew J. Szabo) on February --, 2009
)
Title: Graphic user interface for database)
 system)
)
Art Unit: 3998)
)
Examiner: Jacqulyn L. Williams)
)
Attorney Dkt: 93988)
)
Customer No.: 22242)

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

DECLARATION OF STEVEN HOFFBERG IN SUPPORT OF PETITION FOR
REVIVAL OF ABANDONED APPLICATION FOR UNAVOIDABLE DELAY UNDER
37 CFR 1.137(A)

THE MILDE & HOFFBERG L.L.P. DOCKETING SYSTEM

The Milde & Hoffberg L.L.P. docketing system is consolidated for both preissuance and post-issuance patent matters, foreign associate related matters, as well as trademark and litigation deadlines. That is, all due dates are represented within a common electronic database on a Personal Computer, with a manual card system indexed by attorney docket number and separately by U.S.P.T.O. serial number/patent number (cross reference information). In addition, a manual mail log is maintained of all received correspondence from the U.S.P.T.O., with photocopies of the first page maintained in chronological sequence. The original copy of received mail is date-stamped on the date first opened. To the extent appropriate, a manual list of postcards received from outgoing correspondence is also maintained, and the receipt thereof noted on the manual cards.

With respect to U.S. patent prosecution, the office policy is to docket all relevant dates, such as filing deadlines, response deadlines, and maintenance fee deadlines, within both elements of this unified system. Further, if any discrepancy is noted, the discrepancy is corrected and the root cause investigated. The general rule for correspondence is that incoming U.S.P.T.O. correspondence is not released to the responsible attorney until reviewed for relevant docket dates by staff, which are then marked on the correspondence, marked on the manual card, and entered into the electronic database. If the root cause of any discrepancy lies within our office, modifications are proposed to our internal systems to address any deficiencies and considered for implementation.

Outbound correspondence is not delayed for docketing purposes. Rather, a copy of the post card is made and relevant information drawn from the card, or the file copy. Outstanding requirements are removed from the docket only upon review of the filed paper, or, if appropriate, consultation between the docketing staff and the responsible attorney.

In the present case, it is believed that the failure to enter the above identified Notice into the docket system was attributable solely to the failure of our office to actually receive or otherwise be notified of this document, likely due to the fact that the U.S.P.T.O. failed to include a proper cover sheet on the Notice with our address, and thus permitting this important document to be lost in the mail. Our investigation indicates that the U.S.P.T.O. PAIR system includes a copy of this Notice, but no copy of the cover sheet indicating a sent-to address or mail date.

In view of the foregoing, we believe that the USPTO should review its mailroom procedures to ensure that all outgoing correspondence has an appropriate address listed, and further that the IFW system reflect the address to which correspondence is actually sent. In this case, both appear to be lacking.

The undersigned never received at the correspondence address of record or elsewhere, or had actual indication of the existence of the Notice prior to receiving a call from the Examiner in February 2009, and never gave any instruction to any person(s) avoid docketing the Notice or otherwise permit the application to become abandoned.

A docketing system was thus established and properly maintained which provided a reliable means for recording the relevant dates, and presenting these dates in an orderly fashion to a responsible attorney for action. The docketing system also provided a set of rules and procedures for using the means, to ensure that all relevant dates and deadlines for matters for

which the firm holds responsibility are to be entered in the automated docket system and the manual card docket system, and further that all incoming correspondence be docketed on both systems, with a copy of the first page maintained in a chronological file and a manual log be maintained listing the correspondence and date received of all incoming correspondence from the U.S.P.T.O. relating to patent or trademark applications.

Applicant's undersigned attorneys therefore took reasonable and prudent steps, consistent with the guidance provided in the MPEP, for the creation and maintenance of a proper docketing system, as well as the presentation of the matters to the docketing system in the normal course.

I provide herewith a copy of the manual mail log during the 5 weeks after the apparent date of issuance of the Notice, and a copy of our manual card entry for the identified docket number, each of which fails to indicate the Notice in issue.

It is respectfully submitted that Applicant's Petition to Revive this application, which was Unavoidably Abandoned due to Applicant's undersigned attorney's failure to receive, and subsequently respond to, the Notice dated October 8, 2008, be granted.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity or enforceability of the application or any patent issued thereon.

Respectfully submitted,



By: /Steven M. Hoffberg/
Steven M. Hoffberg
Reg. No. 33511

Dated: _____

526604

3390 205-3
filed: 12-4-03
caused:

~~Ref~~

SN 10/728,743

OVER -

IDS: ~~2-1-04~~ 12-4-03 (w/Ampl.)

Suppl. (DS needed) 8-17-04

IDS ~~10-10-04~~ Electra Valley 9-22-04

(P&O + S) file 37 CFS 3-13(6) memo 11-11-04

R.R. 9-2-05 ~~10-20-05~~ 8-17-05
R.I. 10-10-04 ~~10-10-04~~ 10-6-06

Appellate Court decision 10-10-06 (Electra Valley)

Keep to notice included 1-5-07
PHTER P/A: #4-0 ~~7-10-08~~ Fe
4-4-0-7-08
4 k do issue New Mar 2nd 07 second
supl issue due Feb 10-07 (See)
PHT. 2-16-08 2-15-08 (See)
Approved. 7-16-08 7-16-08 (See)
LII recd 8-28-08 (See) ~~7-10-08~~
TRANSFERRED TO FITCH BREN 10-10-08
12-17-08

Wednesday 10-1-08

10-1-08	LKI 208 PCT	PCT/US08/76194	Notification
9-25-08		12/284219	Assignment Recordation
9-29-08	SUNY RB199	11/1532197	Office Action
9-26-08	LH 10.7	11/1363393	" "
9-29-08	ENDO 2021	11/301493	" "

Thursday 10-2-08

9-30-08	KUSUMOTO 253	12/087325	Acceptance of Appl under 35 USC 371
9-30-08	KUSUMOTO 253	12/087325	Filing Receipt
9-30-08	SILBERT 201 PROV	6/1190136	" "
9-23-08	SCHUTTENECKER 201	7428570	Copies of Patent
9-30-08	EASTERN 201.4	7430511	Letters Patent
9-30-08	AGARDICI 201	11/895229	Office Action

Friday 10-3-08

10-1-08	MONT 206.2	11/953738	Office Action
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Monday 10-6-08

9-16-08	MAZIN 201 PCT	PCT/US08/62460	Notification
10-1-08	GOL 223	10/573927	Office Action
10-1-08	TOWATCH 801	78/864523	" "
10-2-08	CLICK 202	10/415203	" "
10-1-08	TARNOW 801	77/442410	Notice of Publication
9-29-08	NAGEL 808	77/315711	Notice of Abandonment
9-30-08	MAZIN 801	77/172485	" " "
9-21-08	NAGEL 807	77/315676	" " "
9-29-08	HPBK 201	12/152585	Return Postcard
9-29-08	KUSUMOTO 230	10/926262	" "
9-30-08	FOLEY 803	77/334217	Notice of Allowance
10-1-08	GOL 224	10/523400	Office Action
10-1-08	NANYANG 202	11/628378	Acceptance of Appl under 35 USC 371
10-1-08	NANYANG 202	11/628378	Filing Receipt
9-30-08	SATLOFF 806.1	3506964	Certificate of Registration

Wednesday 10-7-08

10-1-08	MATOS 218	12/214663	Updated Filing Receipt
9-18-08	TRACEGUARD 205PCT	PCT/US07/63189	Notification
10-3-08	OMNIZAP 201.1	11/758968	Office Action
10-1-08	GOR807	75/649309	Notice of Abandonment
10-2-08	WEIGEL 206	11/144463	Return Postcard
9-19-08	SULLIVAN 201	12/284219	" " "
10-3-08	HH 322A	29/293930	Notice of Allowance

Wednesday 10-8-08

10-6-08	JJW1	10/873590	Office Action
10-6-08	OMNIZAP 201.2	11/758983	" "
10-6-08	WOLFF 205	11/974261	" "
10-6-08	HPBK 804	79/046854	Examiner's Amendment
10-6-08	LH-11.2	11/467920	Petition Decision
10-6-08	WEIGEL 246	12/224580	Notification of Missing Requirements
10-2-08	HPBK 802	77/436745	Return Postcard
10-3-08	MARCANTONIO 201PCT	PCT/US07/26310	" "
10-4-08	SHENK 806	77/074937	" "

Thursday 10-9-08

9-22-08	CF 201	6199339	Maintenance Fee Reminder
9-22-08	RICE 207.1	6865825	" "
10-7-08	PL 202.1	11/406977	Office Action
	KUSUMOTO 240	7432650	Letters Patent
	EASTERN 2016	7433823	" "
10-2-08	HH 881	74/460658	Notice of Abandonment
10-7-08	RFT 202.1	7403290	Certificate of Correction
10-7-08	SCHNEIDER 225	10/710362	Acceptance of POA
10-7-08	SCHNEIDER 230	11/689512	" " "
10-7-08	SCHNEIDER 223	10/248068	" " "
10-7-08	SCHNEIDER 224	10/604626	" " "
10-7-08	SCHNEIDER 226	10/711834	" " "
10-7-08	SCHNEIDER 216	09/682351	" " "
10-7-08	SUNNY RB-281	12/236396	Filing Receipt

Friday 10-10-08

10-8-08	SCHNEIDER 215	09/682133	Acceptance of POA
10-8-08	SCHNEIDER 211	09/658434	" " "
10-8-08	SCHNEIDER 214	09/681448	" " "
10-8-08	SCHNEIDER 212	09/663074	" " "
10-8-08	SCHNEIDER 204	09/532500	" " "
10-8-08	SCHNEIDER 206	09/598134	" " "
10-8-08	SCHNEIDER 207	09/643584	" " "
10-8-08	SCHNEIDER 208	09/644587	" " "
10-8-08	SCHNEIDER 222	10/064864	" " "
10-8-08	SCHNEIDER 231	09/650827	" " "
10-7-08	SHC 801.1	76/693151	Filing Receipt
10-8-08	SUNY RB 259	12/238351	" "
10-8-08	LH 103	11/363411	Office Action
10-8-08	SUNY RB 259	12/238351	File Corrected App Papers
10-3-08	UC 212	11/288006	Return Postcard
10-3-08	POLTURAK 202	11/051577	" "
10-3-08	MACKAY 202	29/294219	" "
10-3-08	HT 900.	77/057278	" "
10-6-08	WYM 803	77/242904	" "
10-6-08	WYM 802	77/242881	" "
10-3-08	LK1 205.1	6211484	" "
10-6-08	Dep Amt	50 0427	" "
10-6-08	MARCANTONIO 201	11/982911	" "
10-3-08	B+L 208	11/203353	" "
10-3-08	IBZ-201.2	10/462939	" "
9-24-08	SHARROCK 210.1	61/194193	" "
10-6-08	HT 309	10/577181	" "
10-6-08	UC 201	6880464	" "

Monday 10-13-08

10-9-08	SCHNEIDER 219	09/733348	Acceptance of POA
10-9-08	SCHNEIDER 220	09/735114	" " "
10-9-08	SCHNEIDER 213	09/665999	" " "
10-9-08	SCHNEIDER 205	09/542166	" " "

Monday 10-13-08

10-4-08	SUPFINA 201	11/364900	Office Action
9-24-08	SULLIVAN 202	12/284639	Return Postcard
9-26-08	TREMBONE 203	61/194341	"

Tuesday 10-14-08

10-10-08	SCHNEIDER 224	11/637672	Acceptance of POA
10-10-08	SCHNEIDER 227	10/704943	"
10-10-08	SULLIVAN 201	12/284219	Filing Receipt
10-10-08	SUNY B 202.2	11/773263	Office Action
10-10-08	LH 10.4	11/363412	"
10-8-08	AYRES 223	11/360749	Issue Notification
9-30-08	KFM 205.201	6886776	Maintenance Statement
9-30-08	Monthly Statement of Deposit Account		
10-10-08	MATOS 209.1	12/157469	Return Postcard
10-10-08	W+M 802	77/242881	Extension Request Approval
10-10-08	W+M 803	77/242904	"
9-25-08	TCLGD 206PCT	PCT/US07/67331	Supplementary Notice
9-25-08	HOLM 201 PCT	PCT/US07/67455	"
9-25-08	MARCANTONIO 201PCT	PCT/US07/26310	Notification
9-26-08	PIANE 201.1 PCT	PCT/US07/29977	"

Thursday 10-16-08

10-14-08	R+F 202.1	7403290	Certificate of Correction
10-14-08	PULTRAK 201.1	11/467705	Office Action
10-14-08	SMH 205	11/005460	"
10-14-08	HBC 259	11/652757	"
10-14-08	1531.0450003.2	11/535360	"
10-14-08	GNR 201.1	12/241035	Filing Receipt
10-8-08	SCHNEIDER 217	09/683465	Acceptance of POA
10-8-08	SCHNEIDER 218	09/683481	"

Friday 10-17-08

10-15-08	HPBK 201	12/152585	Updated Filing Receipt
10-15-08	MONT 209	61/098227	"

Friday 10-17-08

10-15-08	BERMUDAES 202	61/098174	Filing Receipt
10-15-08	GNR 201.1	12/241028	"
10-15-08	GNR 201.1	12/241028	Notice to File Missing Party
10-14-08	HH 325	12/224579	Notification of Missing Requirements
10-14-08	SCHNEIDER 228	11/676415	Acceptance of POA
10-15-08	NAESENS 201	10/583613	Office Action
10-15-08	UC 207	10/530383	"
10-15-08	KUSUMOTO 232.1 DN	12/005502	"
10-15-08	HH 307	10/568832	"
10-8-08	BIG REC 806.1	76/684307	Return Postcard
10-16-08	MATOS 204.1	12/157469	"
10-17-08	KUSUMOTO 238	11/159997	"
10-14-08	PIANE 210 PCT	PCT/US08/11677	"
10-17-08	JJW 1	10/873590	"
10-14-08	GUR 224	10/526400	"
10-14-08	HPBK 201	12/152585	"
10-14-08	MUDSCI 804	2529794	Accept & Out of 8+15 Dec

Monday 10-20-08

10-16-08	HAIRSTON 203	79/271172	Office Action
10-16-08	PLAZA 201	10/392096	"
10-17-08	GC 201.1 CIP	5542909	Petition Dismiss
	GRESSIANI 201	11/895239	Notice of Publication
	VOVES 202	11/893286	"
10-17-08	SCHNEIDER 210	69/656667	Accepted of POA
10-15-08	EASTERN 2013	11/681449	Issue Notification
10-15-08	EASTERN 201.7	11/749381	"
10-16-08	MONT 209	61/098405	Filing Receipt

Wednesday 10-22-08

10-20-08	KFM 207	11/114836	Notice of Allowance
10-20-08	SUNY RB 221	11/448413	"
10-20-08	LH 11.2	11/467920	Filing Receipt
10-20-08	TREMBONE 203 PRN	61/194341	"

Wednesday 10-22-08

10-20-08	LH 112	11/467923	Urgent New Notice
10-20-08	SULLIVAN 202	12/284639	Notice to File Corrected Cipp Papers
10-20-08	HYPRES 225	11/616382	Office Action
10-20-08	ELO 205.5	11/336694	"
10-11-08	ENDO 801	74/263557	Notice of Design Search Letter
10-16-08		91186298	Opposition Letter
10-7-08	SCHNEIDER 212	6944658	Maintenance Fee Statement
10-7-08	LSI 202	5661799	" " "
10-7-08	LKI 205.1	6211484	" " "
10-17-08	Dep Auct	500427	Return Postcard

Thursday 10-23-08

10-21-08	SUNY B 201.1	12/202824	Incomplete Information App
10-4-08	OMNIZAP 201 PCT	PCT/US07/10512	Supplementary Notice
10-6-08	FIEGURA 201	6114774	Notice of Patent Expiration

Friday 10-24-08

10-21-08	HH 899	77/031372	Notice of Allowance
10-22-08	HH 308	11/398162	Office Action
10-9-08	JW 9	61/195697	Return Postcard
10-22-08	HH 300	10/491062	" " "
10-22-08	GDR 223	10/573927	" " "
10-22-08	PLAZA 201	10/392096	" " "
10-22-08	KUSUMOTO 239	11/154408	" " "

Monday 10-27-08

10-22-08	LH 107	11/363393	Issue Notification
10-22-08	LB2-201.2	10/462939	" " "
10-22-08	B+L 208	11/203353	" " "
10-24-08	CALLTROL 202	61/101050	Filing Receipt
10-24-08	SHARRICK 2101 PROV	61/194193	" " "
10-24-08	SUTHAR 201	10/625044	Office Action
10-24-08	NTD 208	10/878837	" " "
10-24-08	HMP 2032	11/135174	" " "

Thursday 10-27-08

10-24-08	MLC 201-1	11/612268	Office Action
	EASTERN 203	12/054656	Notice of Publication
	MATOS 214	11/891827	" " "
10-17-08	SCHNEIDER 203	09/525350	Acceptance of Port
10-17-08	SCHNEIDER 221	10/064363	" " "
10-17-08	SCHNEIDER 202	09/440606	" " "
10-17-08	SCHNEIDER 209	09/653100	" " "
10-17-08	SCHNEIDER 201	08/900437	" " "
9-21-08	SCHNEIDER 228	11/676415	Notice of Allowance
10-23-08	MYAT 205	12/217312	Return Postcard
10-14-08	PIANE 210	12/237731	" " "

Tuesday 10-28-08

10-9-08 LK1 208 PCT PCT/US08/76194 Notification

Wednesday 10-29-08

10-24-08	HII 831	74/608622	Notice of Design Search Code
10-24-08	HBC 259	11/652757	Return Postcard
10-22-08	PIANE 84.1	78/946970	" " "
10-27-08	SUNY RB 218 PCT	PCT/US06/47844	Notification
10-27-08	ALEXANDER 201 PCT	PCT/US08/09010	" " "
10-24-08	SCHEUK 306	77/074931	Acceptance of SOR
10-27-08	MATOS 209.1	12/157469	Updated Filing Receipt
10-27-08	JJW9 PROV	6/195697	" " "

Thursday 10-30-08

10-24-08	PIANE 210	12/287731	Assignment of Recordation
10-16-08	VOYES 202 PCT	PCT/US08/04304	Notification
10-28-08	UC 212	11/288006	Notice of Allowance
10-16-08	HPBK 202	11/288064	Return Postcard
10-27-08	WEISS 201.2	11/355811	" " "
10-28-08	HYPRES 223	7443719	Letters Patent
10-27-08	SUNY RB 229	11/313564	Patent Decision
10-26-08	ENDO 202P	60/529035	" " "
		..1715475	Office Action

Friday 10-31-08

10-29-08	Hudson 211.1	12/251385	Filing Receipt
10-29-08	R+T 202.2 CON	12/157853	Office Action
10-29-08	LARIMER 205.1	11/775356	"
10-28-08	BELAGNA 804	3523430	Certificate of Registration
10-28-08	HYPRES 223	7443719	Copies of patent
10-24-08	BUFFALO 804	76/051267	Notice of Acceptance
10-24-08	HPBK 202	12/288064	Assignment Recordation

Monday 11-3-08

10-29-08	RCS 202	29/140571	Notice re Change of POA
10-31-08	ELO 2056	11/934650	Office Action
10-30-08	FLANAGAN 202.1	11/072183	" " "
10-30-08	HUDSON 208	10/730791	" " "
10-30-08	WEISS 201.2 CONT	11/355811	" " "
10-23-08	UC 201	68804646	Non-accept of Smart Maint Fee
10-29-08	CLICK 202	10/415203	Issue Notification
10-29-08	MACKAY 202	29/294219	" " "
	SMH 207	12/089277	Notice of Publication
	AGARDICI 201	11/895229	" " "
10-13-08	LONG 203	6209809	Maint Fee Reminder
10-20-08	MEDYS 201	5621173	" " " "
10-27-08	CES 801	76/633368	Notice of Abandonment
10-27-08	CAPSTONE 815	76/648650	" " " "
10-30-08	SULLIVAN 202	12/284639	Return Postcard
10-21-08	MARCANTONIO 201.1	12/288493	" " "
10-30-08	FOLEY 803	77/384217	" " "

Wednesday 11-5-08

11-3-08	GNR 207.1	12/241035	Response to Correct Filing Receipt
11-3-08	GRIMM 236	10/579601	Office Action
11-3-08	AP051-06	10/528400	" "
11-3-08	QMARK 201.2	10/791019	" "
10-29-08	NAESENS 201	10/583613	Return Postcard
10-30-08	WEIGEL 246	12/224580	" "

Thursday 11-6-08

11-4-08	EASTERN 201.3	7447637	Letter Patent
11-4-08	EASTERN 201.7	7447638	" "
10-31-08	PIANE 809	771080792	Return Postcard
10-31-08	HH 904	771080765	" "
11-4-08	TDT 209.1	101655625	Office Action

Friday 11-7-08

11-4-08	HH 905	3526251	Certificate of Registration
11-3-08	DRUMMOND 801	771251990	Return Postcard
10-31-08	PIANE 807.1	771080780	" "
11-5-08	LKI 205.6	101996948	Notice of Allowance

Monday 11-10-08

11-5-08	FOLEY 803	771384217	Approval of Pet Request
11-5-08	JURIMARK 811	771047841	Notice of Publication
11-5-08	WEISS 201.2	111355811	Return Postcard
11-7-08	KUSUMOTO 222	6860540	" "
11-6-08	KUSUMOTO 231	101926264	" "
11-7-08	HH 903	771080765	Acceptance of SOR
11-4-08	WEIGEL 246	121224580	Assignment Recordation
11-6-08	PIANE 210	121287731	Filing Receipt
11-6-08	MYAT 205	121217812	" "
11-6-08	MLC 201.1	111612268	Office Action
11-3-08	LKH 10.2 RE	121039735	Notice of Abandonment

Wednesday 11-12-08

11-10-08	SUNY RB 229 US	121162992	Filing Receipt
11-11-08	BIG ROC 819	771435705	Notice of Allowance
11-10-08	SUNY RB 229 US	121162992	Accept of App Under 371
11-10-08	GRIMM 242	111920371	" " " "
11-10-08	GRIMM 242	111920371	Filing Receipt
11-12-08	QWIMPO 201	111004793	Notice re Change of POA
11-10-08	SALMON 201	111825741	Office Action
11-6-08	HH 322A	291293930	Return Postcard
11-7-08	LLC 213	111473758	" "